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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,923	09/22/2003	Lee M. Amaitis	069547.0161	1611
5073	7590	11/04/2008		
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			EXAMINER RENDON, CHRISTIAN E	
			ART UNIT 3714	PAPER NUMBER
			NOTIFICATION DATE 11/04/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/667,923	<b>Applicant(s)</b> AMAITIS ET AL.	
	<b>Examiner</b> CHRISTIAN E. RENDÓN	<b>Art Unit</b> 3714	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 August 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

This office action is in response to the amendment filed on 8/15/08 in which applicant has responded to the previous office action. Claims 1-52 are pending.

### ***Claim Rejections - 35 USC § 112***

Claims 8 and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The limitation requires using the same index number to define three different ranges: greater than, less than however a third range is mathematically impossible.

### ***Claim Rejections - 35 USC § 102***

**Claims 1, 3-4, 9-13, 15-17 and 22-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Simon (US 7,172,508 B2).**

1. Simon discloses a pari-mutuel betting game (PBG) that allows a group of players to place wagers on a series of events (col. 9, lines 65-66) associated with a live sporting event (abstract). The size and location of the group of players can be either small and reside in a local setting like a sports bar or a house, as well as a large group such as a game session over the Internet (col. 9, lines 62-64). The invention regards the term 'sporting event' as either a short-term experience like single game or match (col. 10, line 4) or a longer-term experience like a sports league, a tournament or a multi-game series (col. 10, lines 8-11). A player must be clever amount how to divide their funds between short and long-term events since the money placed on long-term events is frozen until the event is resolved and offers a greater payoff if won (col. 2, lines 39-49); while the resolution of a short-term bet is reached quickly with little return. Therefore requiring the player to manage their

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money wisely if they wish to place smaller bets while he/she waits for the resolution of long-term bet such as a team's standing in a sports league, the outcome of a tournament or multi-game series (col. 10, lines 9-11). In other words, the art teaches allowing a player to gamble on each of the plurality of events through short and long-term betting events.

2. The results of a PBG are based on a live game therefore before a game begins only certain betting lines are open and are closed by an administrator (abstract) when the game begins. Depending on the sport and the number of possible betting events a new betting lines could appear every minute or so (col. 14, lines 46-49), allowing players to wager on how the game is evolving (col. 2, lines 14-15). Therefore a PBG uses an Open-Close-Terminate Sequence to provide multiple betting lines for each betting event (col. 6, lines 4-8). Furthermore, the administrator of the PBG monitors the live game for situations that give rise to betting events and decides to open a betting line with a bonus for that event (col. 7, lines 11-21). Therefore the value of a sporting event as a possible betting event is left to the discretion of the administrator (col. 10, lines 17-20).

3. Regarding claims 1 and 17, the prior art offers several examples of betting events as a means to illustrate that the purpose of the invention as an extension from the typical simple pari-mutuel betting line to a hierarchical or tree structure betting line system (col. 10, lines 21-28). In other words, a player can place a bet on a bettor to 'strike out' (Fig. 8A, 2001, 'Out') or not (Fig. 8A, 2001, 'Safe'). Next the player can place another bet on the details of the first outcome, if the batter is 'out' as the results of a 'strike out', 'fly ball out', or 'ground ball out' (Fig. 8A, 2002, left tree branch, level 2). If the player believes the batter will 'strike out', another betting opportunity opens up allowing the player to wager if the batter will 'swing and miss' or mistake the pitches for 'a ball' (Fig. 8A, 2003, left tree branch, level 3). A player can also place bets on predicting the total number of points scored by both teams for each of the identified sporting events (col. 4, lines 8-10). In other words, the system allows a gambler to place a bet on the total number of units or points earned or scored by a participant or

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team over the course of one (short-term) or several (long-term bet) sporting events. The conditions of the event: who, how long, how much, how many, etc. are decided by the administrator of the PBG (col. 7, lines 11-21). In other words betting lines that require a player to guess the total number of units earned are offered however not limited to the examples offered by the prior art. Such as wager on the type of hit made by a batter: 'single', 'double', 'tripe' or a 'home run' (Fig. 8A, 2002-2003) or a football team's next score entails a 'field goal', 'safety' or 'touchdown' (col. 16, 26-28). Once again the only limit to the betting lines and its conditions is an administrator's imagination (col. 6, lines 21-22). Furthermore these examples of betting lines offer players a range of condition or numbers to place a wager on that if properly guessed offer the player a payout from a pari-mutuel betting pool (col. 5, lines 62).

4. The Office feels it is necessary to state that the vague claim language also allows for a person to interrupt a first and second type of bet more broadly than stated above. The disclosed system allows a player to wager on multiple and different betting events or hierarchical trees that are related to the same game or series of games. For example, a player is allowed to place a wager on how a football team's next 'drive' will terminate (col. 16, lines 2-5) while simultaneously having a wager placed on how many touchdowns will be scored in the quarter (col. 16, lines 40-43) and a wager on the final score (col. 4, lines 9-10) and the winner of the game (col. 15, line 42). Furthermore, placing a bet on the final score and the winner of the game is considered equivalent towards a plurality of units allocated among participants respective to a finishing position.

5. Regarding claim 3-4, the prior art states horse and automobile races as a possible sporting event a group of players could place bets on using the disclosed system (col. 18, lines 5-27).

Therefore the invention inherently incorporates placing wagers on a jockey or driver and all of the rules and terms of both types of races.

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6. Regarding claims 9, 15-16 & 22, the prior art discloses placing bets on the total of points scored by both teams (col. 4, lines 8-10). In other words, placing a bet on a team's finishing position at the end of a game. The prior art also allows the placing of bets on a team's standing in a sports league (col. 10, lines 8-9) therefore allowing a gambler to guess the finishing position of a team at any point during a longer-term event such as a season or tournament (col. 10, lines 8-11).

7. Regarding claims 12-13 and 25-26, Simon discloses the intentions of applying PBG to non-traditional sporting events like the gain and losses on a stock market to the system (col. 10, lines 12-15). Therefore the hierarchical betting line would entail betting that a stock would increase in value in a 'X' number of days and second level bet would ask how much of a gain is predicted.

***Claim Rejections - 35 USC § 103***

**Claims 14 and 27 rejected under 35 U.S.C. 103(a) as being unpatentable over Simon.**

8. The above description of the invention disclosed by Simon and the limitations they pertain is considered within this art rejection as well. Simon recognizes that live games are in a state of flux (col. 2, lines 12-13) and consequences of a previous situation can create new betting lines (col. 3, lines 4-7). Therefore the constant flow of new information is either maximized by an experienced player who waits (col. 14, lines 49-51) or overwhelms a beginner causing them to change their mind, but still the end result is rewarding the players who guessed correctly early in a betting event (col. 2, lines 12-16). Even though Simon mentions that the flow of information can change a player's mind on a decision that he/she had or will make on a wager, Simon is silent about allowing a player to cancel a wager after one or more events have occurred. It would have been obvious to one of ordinary skill to allow a player to cancel their bets for the following reason. The system offers an significant amount of information on each open betting line and some of these lines remain open for a series of games therefore it is only logical to allow a player the opportunity to back out of a wager that will take a long time to reach an outcome when the player has lost faith in their choice. Furthermore it is only logical

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for the system to return only a portion of the player's money as a form of punishment for backing out of the bet and causing the par-mutual betting pool to decrease for that particular line.

**Claims 5-8 and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon (US 7,172,508 B2) in view of Friedman (US 6,126,543).**

9. The above description of the invention disclosed by Simon and the limitations they pertain is considered within this art rejection as well. Simon describes the state of the art by disclosing several patented inventions. The patent awarded to Friedman is for a method for wagering on multiple sporting events. The invention disclosed by Friedman allows players to place combined point spread wagers with over/under numbers on two or more events (col. 5, lines 31-46). Even though Simon states the disclosed invention as superior to the prior art (col. 5, lines 47-49), the rest of the art remains silent about point spread and over/under betting.

10. Regarding claims 5 and 18, Friedman discloses a pari-mutuel wagering system that allows for exotic type of bets (Friedman: abstract), point spread and over/under bets (Friedman: fig 5a; 36, 44). The art defines an over/under bet on the total amount of points the two teams will score (Friedman: col. 1, lines 66-67). The predicted total or final score is called the index and a bettor can wager if the teams will exceed or go under the index (Friedman: col. 2, 1-6). If the end result is a total score that equals the index then the gambler's wagers are pushed or refunded. These type of bets: exotic, point spread and over/under are well known in the art of sports gambling and it would have been obvious to one of ordinary skill to include them and other elements disclosed by Friedman into Simon's invention as further improving a system of conducting a sport game and wagering over a computer network (Simon: col. 5, lines 47-49).

11. Regarding claims 6-8 and 19-21, depending on the current betting lines the prior art combination can allow a player to place a third level or type of bet as disclosed by the baseball batter example (Fig. 8A). The invention places no limits on how many levels a hierarchical betting line

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contains and states that it is based on “whether the game situation changes enough so that the odds on the choices are significantly different than they were for the previous line” (col. 3, lines 4-7).

Therefore a forth or ‘X’ number of levels or type of bets is inherently incorporated in the invention.

**Claims 28-29 and 31-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon in view of Friedman and Ken Daley “Handicapping the Race; Bet on McGwire surging past Maris, Sosa fading at the wire”.**

12. The above description of the Simon and Friedman art combination and the limitations they pertain is considered within this art rejection as well. The art combination creates a pari-mutuel betting system that allows for under/over index bets in a hierarchical betting system (col. 10, lines 21-28). The prior art system places no limitations towards an administrator’s decision (col. 6, lines 21-22) to open a betting line (col. 7, lines 17-18) towards a current or possible event (col. 7, lines 12-13). Therefore allowing an administrator to react to the current rivalries occurring in a sport such as the famous 1998 Major League Baseball home run record chase between Sammy Sosa and Mark McGwire.

13. Regarding claims 28 and 42, Sosa and McGwire were in a race to break the highly coveted record of 61 home runs in a season made by Roger Maris in 1961. The article written by Ken Daley for the ‘The Dallas Morning News’ discloses the placing of bets on whom, Sosa or McGwire would break the record first (Daley: par. 8, lines 3-4). Therefore the article teaches that in 1998 betting systems were taking bets on which participant (Sosa or McGwire) over the course of a plurality of events or in a season will exceed a particular index or 61 home runs first. Simon places no limitations on the type or conditions of a betting line (Simon: col. 7, lines 12-13) allowed to administrator (col. 6, lines 21-22) therefore it would have been obvious for an administrator of ordinary skill to allow their gamblers to place wagers on whom of the baseball player would break the home run record in 1998.



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14. Regarding claims 29, 33, 39-41, 43-44 & 50-52, the system disclosed by Simon offers winners a pari-mutuel payoff (Simon: col. 5, line 62). In other words, the betting pool of the event is divided amongst the winners (Simon: col. 1, lines 12-15). Simon discloses a hierarchical betting line system (Simon: col. 10, lines 21-28) that offers many different betting lines such as the total of points scored for the identified sporting events (Simon: col. 4, lines 9-10), a team's standing in a sports league (Simon: col. 10, lines 8-10) or breaking a world record (Delay). In other words, the system accepts first, second or additional bets after a previous event has occurred regarding matching or exceeding the number of hits, wins or units earned by a participant in a plurality of events.

15. Regarding claim 31-32, these claim limitations were discussed above in the rejection of claims 3-4 respectively; please see above for further detail.

16. Regarding claims 34 and 45, this claim limitation was discussed in the rejection of claim 13; please see above for further detail.

17. Regarding claims 35-36 and 46-47, this claim limitation was discussed in the rejection of claim 14; please see above for further detail.

18. Regarding claims 37-38 and 48-49, this claim limitation was discussed in the rejection of claim 15-16 respectively; please see above for further detail. 30-32

**Claims 2, 10-11 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon in view of McNutt et al. (US 6,837,791 B1).**

19. The above description of the invention disclosed by Simon and the limitations they pertain is considered within this art rejection as well. Simon states horse and automobile races as a possible sporting event a group of players could place bets on using the disclosed system (Simon: col. 18, lines 5-27). Therefore the invention inherently incorporates placing wagers on a jockey or driver and all of the rules and terms of both types of races.

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20. Regarding claims 2, 11 and 24, McNutt discloses an interactive pari-mutuel betting system (McNutt: col. 23, line 61) that offers wagers on horse races (McNutt: abstract). The totalisator **30** offers the gambler information typically provided in printed racing programs such as purse value or payoff to winning runner (McNutt: col. 6, lines 40-48); therefore also providing the purse distribution for the event since each winning position rewards the horse a different prize amount. Since Simon is silent about several aspects towards wagering on horse races it would have been obvious for one having ordinary skill in the art to combine Simon and McNutt to 'fill in the blanks.' Simon allows the administrator to open betting lines at their discretion (Simon: col. 7, lines 12-18) therefore the combined prior art system would allow a gambler to wager on participator's earned purse amount as a second hierarchical bet (col. 10, lines 21-28).

21. Regarding claims 10 and 23, the art discloses defining a sporting event as a tournaments (col. 10, lines 8-11) and soccer as one of the many type of sports the system can be applied too (col. 17, line 63). Therefore the art inherently incorporates the point structure of the FIFA World Cup tournament and allows for an administrator to create betting events and lines using the tournament rules; won matches are awarded three points and tie matches are worth one point. Furthermore, this claim limitation is also applied towards the possibility of a horse achieve a win, place or show in a race as described previously.

**Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Simon in view of Friedman and Ken Daley "Handicapping the Race; Bet on McGwire surging past Maris, Sosa fading at the wire" and McNutt.**

22. The above description of the Simon, Friedman and Daley art combination and the limitations they pertain is considered within this art rejection as well. The claim limitation was discussed above in the rejection of claim 2; please see above for further detail.

***Response to Arguments***

Applicant's arguments filed 8/15/08 have been fully considered but they are not persuasive.

***112 Rejection***

The language found in claim 8 states, "determining the first range of numbers, the second range of numbers and the third range of numbers based at least in part on the index number." The Examiner reads this line using a single number to define three mathematical ranges since the claim ends a list with "based at least in part on the index number". As stated above, the Examiner finds it mathematically improbable to base three ranges on a single number.

***102 Rejection***

The applicant is under the belief the Examiner equated "units" as wager amounts when in fact the Examiner has used the prior art's description of "points earned or scored by a participant or team over the course of one (short-term) or several (long-term bet) sporting events" (OA: par. 3) as teaching the applicant's units. The applicant has also mistaken the Examiner's rejection towards "among participants according to a respective finishing position of each participant" as the wagering amount a gambler receives from successful wagers. However, the Examiner has stated "the winner of the game is considered equivalent towards a plurality of units allocated among participants respective to a finishing position" (OA: par. 4). In other words, the finish position of each participant is the standing of an athlete at the end of a game. The Examiner was meticulous about clearly stating that the gamblers are the players place wagers (OA: par. 1) and the athletes are the participants (OA: par. 4), the batters and the teams (OA: par. 3).

***103 Rejection***

The applicant argues the non-patent literature (NPL) that was provided fails to teach "a bet that the number of units earned by that participant over the course of the plurality of events will exceed a particular index number before the number of units earned by any other of the plurality of participants

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exceeds the particular index number". The Examiner respectfully disagrees since the title of the NPL defines the betting event as the "Great Chase of 1998" also known in the art as "1998 Major League Baseball home run record chase". The broadest definition of "chase" is *to follow somebody quickly in order to catch him or her*. Sammy Sosa and Mark McGwire were racing each other to break Roger Maris's record of 61 home runs. Thus the reference explains how at the time wagers were made on which man would break the record with 62 home runs first. Therefore the reference teaches using 61 home runs as an index and placing bets on which participant or batter will exceed the index first.

Rejection of claims 14 and 27

As stated above, the Examiner viewed the inclusion of a canceling option to the Simon reference as an obvious alteration. Since the system offers an significant amount of information on each open betting line and some of these lines remain open for a series of games therefore it is only logical to allow a player the opportunity to back out of a wager that will take a long time to reach an outcome when the player has lost faith in their choice. Furthermore it is only logical for the system to return only a portion of the player's money as a form of punishment for backing out of the bet and causing the par-mutual betting pool to decrease for that particular line.

Rejection of claims 2, 5-8, 10-11, 18-21 and 23-24

The applicant relies on the his/her belief that these claims are allowable since the independent claims are not taught by the references provided. The Examiner respectfully disagrees with this argument.

**Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the

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mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTIAN E. RENDÓN whose telephone number is (571)272-3117. The examiner can normally be reached on 9 - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dimtry Suhol can be reached on 571-272-4430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dmitry Suhol/  
Supervisory Patent Examiner, Art Unit 3714

/CHRISTIAN E RENDÓN/  
Examiner  
Art Unit 3714

CER